

Jay Bee Industries and Spl Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-18-2005

Judge : S Kang, Vice, M T K.C.

Appellant : Jay Bee Industries and Spl

Respondent : Cce

Judgement :

1. Heard both sides. The applicants filed these applications for waiver of predposit of duty and equal amount of penalty.

2. The brief facts of the case are that the applicants are engaged in the manufacture of transformer. They are also engaged in the repair of old and used transformers. In the present case, the old and used/defective transformers are received by the applicants for repair.

In these transformers, the Electricity Boards handed over the transformers after removing the coil and oil to the applicant and applicants after repair cleared those transformers without payment of duty to the various State Electricity Boards. Show Cause Notice was issued to the applicants demanding duty in respect of these transformers and they are only receiving tank and core of the transformer from the electricity boards and out of this core and tank, a new transformer is manufactured by them. The extended period of limitation was also invoked on the applicants on the ground that they had suppressed the facts regarding receipt of core and tank in the factory.

3. The contention of the applicants is that in pursuance to the tenders floated by the various Electricity Boards for repair of transformers, the applicants are receiving work order for repair of old and used transformers. The contention is that work order is for repair of transformers and as per the technical specification, repair works are opening of transformers cover, detanking core and coil assembly at the Board's premises for taking only tank and core and other parts to the works of the repairing firm and HT/LT damaged coils and oil are to be removed at the board's place and remaining parts are thereafter were shifted to the applicant's premises.

4. The contention of the applicants is that the transformers received by them from various SEBs for repair contain parts cash as radiators, conservator, top cover, oil level gauge, bend pipe, air release plug, drain wall, bottom channel, CI caps etc. The LT/HT coils and transformer oils are removed at the Electricity Boards premises. The transformers so received are repaired and cleared to the electricity boards after repair and this activity undertaken by the appellants does not amount of manufacture. The appellants relied on the decision of this Tribunal in the case of East India Transformers & Switch Gears (P) Ltd. v. CCE - 1989 (43) ELT 561(T). In this case, the Tribunal held that repair of the transformer does not amount to manufacture and the appeal filed by the revenue was dismissed by the Hon'ble Supreme Court reported in 1997 (93) ELT A 125. The applicants submitted that demand is time-barred as they were duly furnishing D-3 intimation relating to the receipt of the damaged transformers and informed the revenue that they were receiving core and tank and gear assembly. The finding of the Commissioner is that the applicants had not declared that they had received the core and tank is not sustainable.

5. The applicants also submitted that in case duty is confirmed they are entitled for the benefit of cum-duty price and also entitled for the credit on inputs.

6. The contention of the revenue is that the applicants are receiving the core and tanks in their premises which are not transformers and that they are manufacturing a new transformer which is different and distinct from the core and tank. This activity amounts to manufacture.

The contention is that transformer is dismantled at the electricity boards premises and the transformers coil and oil is removed from the damaged transformer and applicants are allowed to take only the core and tanks to their premises. The contention is that this activity of manufacture was not disclosed to the revenue. They also relied on the decision of the Hon'ble Supreme Court in the case of Tecumseh Products India Ltd. v. CCE, Hyderabad - 2004 (167) ELT 498 (SC). The Hon'ble Supreme Court held that stators which were used in the repairing of the compressors involving manufacturing activity amount to manufacture of stators.

7. In this case, the issue is whether activity undertaken by the appellants amounts to repair or manufacture. The applicants are receiving work order which clearly indicates the repair of transformers. As per the condition of the work order, the transformer is opened to the premises of the electricity boards and damaged coil and transformer oil is removed and the remaining parts are received by the applicants in their factory. After doing that there were returned to the electricity boards. On receipt of the damaged transformers in the factory, the applicants were filing D-3 intimation whereby it was mentioned the receipt of tank and core assembly. The Tribunal in the case of East India Transformers & Switch Gears (P) Ltd. decision relied upon by the applicant held that repair of transformer does not amount to manufacture and an appeal filed by the revenue in this regard was dismissed by the Supreme Court. In view of the fact that applicants were filing declaration regarding receipt of the tank and core assembly in their factory by submitting D-3 intimation, prima facie, the applicants have a strong case for waiver of duty and penalty on time bear also. The predeposits of duty and penalty are waived. Stay petitions are allowed.

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